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January 31, 2003

Mr. Peter Karoczkai
Sr. VP Sales and Marketing
A.R.C. Networks, Inc. d/b/a InfoHighway
1333 Broadway, Suite 1001
New York, NY 10018

Re: Requested Adoption Under Section 252(i) of the TA96

Dear Mr. Karoczkai:

Verizon New England Inc., d/b/a Verizon Massachusetts, f/k/a New England Telephone and Telegraph Company, d/b/a Bell Atlantic - Massachusetts ("Verizon"), a New York corporation, with principal place of business at 185 Franklin Street, Boston, Massachusetts 02110, has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the "Act"), A.R.C. Networks, Inc. d/b/a InfoHighway ("ARC"), a New York corporation, with principal place of business at 1333 Broadway, Suite 1001, New York, New York 10018, wishes to adopt the terms of the arbitrated Interconnection Agreement between AT&T Broadband of Massachusetts LLC ("AT&T") and Verizon that was approved by the Massachusetts Department of Telecommunications and Energy (the "Commission") as an effective agreement in the Commonwealth of Massachusetts in Docket No. 99-42/43, as such agreement exists on the date hereto after giving effect to operation of law (the "Terms"). I understand ARC has a copy of the Terms. Please note the following with respect to ARC's adoption of the Terms.

1. By ARC's countersignature on this letter, ARC hereby represents and agrees to the following five points:
 - (A) ARC adopts (and agrees to be bound by) the Terms of the AT&T/Verizon arbitrated agreement for interconnection as it is in effect on the date hereof after giving effect to operation of law, and in applying the Terms, agrees

that ARC shall be substituted in place of AT&T Broadband of Massachusetts LLC and AT&T in the Terms wherever appropriate.

- (B) Notice to ARC and Verizon as may be required under the Terms shall be provided as follows:

To: A.R.C. Networks, Inc. d/b/a InfoHighway
Attention: Paola M. Bulloch
Director of Regulatory Affairs
1333 Broadway, Suite 1001
New York, NY 10018
Telephone number: 646-536-6954
FAX number: 212-695-9667
Internet Address: pbulloch@infohighway.com

with a copy to:

Kelley Drye & Warren LLP
Attention: Genevieve Morelli and Andrew M. Klein
1200 19th Street, NW, Suite 500
Washington, DC 20036
Telephone number: 202-955-9600
FAX number: 202-955-9792
Internet Address: aklein@kelleydrye.com

To Verizon:

Director-Contract Performance & Administration
Verizon Wholesale Markets
600 Hidden Ridge
HQEWMNOTICES
Irving, TX 75038
Telephone Number: 972-718-5988
Facsimile Number: 972-719-1519
Internet Address: wmnotices@verizon.com

with a copy to:

Vice President and Associate General Counsel
Verizon Wholesale Markets
1515 N. Court House Road
Suite 500
Arlington, VA 22201
Facsimile: 703-351-3664

- (C) ARC represents and warrants that it is a certified provider of local telecommunications service in the Commonwealth of Massachusetts, and

that its adoption of the Terms will cover services in the Commonwealth of Massachusetts only.

- (D) In the event an interconnection agreement between Verizon and ARC is currently in effect in the Commonwealth of Massachusetts (the "Original ICA"), this adoption shall be an amendment and restatement of the operating terms and conditions of the Original ICA, and shall replace in their entirety the terms of the Original ICA. This adoption is not intended to be, nor shall it be construed to create, a novation or accord and satisfaction with respect to the Original ICA. Any outstanding payment obligations of the parties that were incurred but not fully performed under the Original ICA shall constitute payment obligations of the parties under this adoption.
 - (E) Verizon's standard pricing schedule for interconnection agreements in the Commonwealth of Massachusetts (as such schedule may be amended from time to time) (attached as Appendix 1 hereto) shall apply to ARC's adoption of the Terms. ARC should note that the aforementioned pricing schedule may contain rates for certain services the terms for which are not included in the Terms or that are otherwise not part of this adoption. In an effort to expedite the adoption process, Verizon has not deleted such rates from the pricing schedule. However, the inclusion of such rates in no way obligates Verizon to provide the subject services and in no way waives Verizon's rights.
- 2. ARC's adoption of the AT&T arbitrated Terms shall become effective as of February 3, 2003. The Parties understand and agree that Verizon will file this adoption letter with the Commission promptly upon my receipt of a copy of this letter, countersigned by ARC as to points (A), (B), (C), (D) and (E) of paragraph 1 above. The term and termination provisions of the AT&T/Verizon agreement shall govern ARC's adoption of the Terms. The adoption of the Terms is currently scheduled to expire on June 25, 2003.
 - 3. As the Terms are being adopted by you pursuant to your statutory rights under section 252(i), Verizon does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by Verizon of the Terms does not in any way constitute a waiver by Verizon of any position as to the Terms or a portion thereof, nor does it constitute a waiver by Verizon of all rights and remedies it may have to seek review of the Terms, or to petition the Commission, other administrative body, or court for reconsideration or reversal of any determination made by the Commission pursuant to arbitration in Docket No. 99-42/43, or to seek review in any way of any provisions included in these Terms as a result of ARC's 252(i) election.
 - 4. Nothing herein shall be construed as or is intended to be a concession or admission by Verizon that any contractual provision required by the Commission in Docket

- No. 99-42/43 (the AT&T arbitration) or any provision in the Terms complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commissions, the decisions of the courts, or other law, and Verizon expressly reserves its full right to assert and pursue claims arising from or related to the Terms.
5. Verizon reserves the right to deny ARC's adoption and/or application of the Terms, in whole or in part, at any time:
- (a) when the costs of providing the Terms to ARC are greater than the costs of providing them to AT&T;
 - (b) if the provision of the Terms to ARC is not technically feasible; and/or
 - (c) to the extent that Verizon otherwise is not required to make the Terms available to ARC under applicable law.
6. For avoidance of doubt, please note that adoption of the Terms will not result in reciprocal compensation payments for Internet traffic. Verizon has always taken the position that reciprocal compensation was not due to be paid for Internet traffic under section 251(b)(5) of the Act. Verizon's position that reciprocal compensation is not to be paid for Internet traffic was confirmed by the FCC in the Order on Remand and Report and Order adopted on April 18, 2001 ("*FCC Internet Order*"), which held that Internet traffic constitutes "information access" outside the scope of the reciprocal compensation obligations set forth in section 251(b)(5) of the Act.¹ Accordingly, any compensation to be paid for Internet traffic will be handled pursuant to the terms of the *FCC Internet Order*, not pursuant to adoption of the Terms.² Moreover, in light of the *FCC Internet Order*, even if the Terms include provisions invoking an intercarrier compensation mechanism for Internet traffic, any reasonable amount of time permitted for adopting such provisions has expired under the FCC's rules implementing section 252(i) of the Act.³ In fact, the *FCC Internet Order* made clear that carriers may not adopt provisions of an existing interconnection agreement to the extent that such provisions provide compensation for Internet traffic.⁴

¹ Order on Remand and Report and Order, In the Matters of: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68 (rel. April 27, 2001) ("*FCC Remand Order*") ¶44, *remanded*, *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. May 3, 2002). Although the D.C. Circuit remanded the *FCC Remand Order* to permit the FCC to clarify its reasoning, it left the order in place as governing federal law. *See WorldCom, Inc. v. FCC*, No. 01-1218, slip op. at 5 (D.C. Cir. May 3, 2002).

² For your convenience, an industry letter distributed by Verizon explaining its plans to implement the *FCC Internet Order* can be viewed at Verizon's Customer Support Website at URL www.verizon.com/wise (select Verizon East Customer Support, Business Resources, Customer Documentation, Resources, Industry Letters, CLEC, May 21, 2001 Order on Remand).

³ *See, e.g.*, 47 C.F.R. Section 51.809(c).

⁴ *FCC Internet Order* ¶ 82.

7. Should ARC attempt to apply the Terms in a manner that conflicts with paragraphs 3-6 above, Verizon reserves its rights to seek appropriate legal and/or equitable relief.
8. In the event that a voluntary or involuntary petition has been or is in the future filed against ARC under bankruptcy or insolvency laws, or any law relating to the relief of debtors, readjustment of indebtedness, debtor reorganization or composition or extension of debt (any such proceeding, an “Insolvency Proceeding”), then: (i) all rights of Verizon under such laws, including, without limitation, all rights of Verizon under 11 U.S.C. § 366, shall be preserved, and ARC’s adoption of the Verizon Terms shall in no way impair such rights of Verizon; and (ii) all rights of ARC resulting from ARC’s adoption of the Verizon terms shall be subject to and modified by any Stipulations and Orders entered in the Insolvency Proceeding, including, without limitation, any Stipulation or Order providing adequate assurance of payment to Verizon pursuant to 11 U.S.C. § 366.

Please arrange for a duly authorized representative of ARC to sign this letter in the space provided below and return it to the undersigned.

Sincerely,

VERIZON NEW ENGLAND INC., D/B/A VERIZON MASSACHUSETTS

Jeffrey A. Masoner
Vice President – Interconnection Services Policy & Planning

Reviewed and countersigned as to points A, B, C, D and E of paragraph 1 only. ARC agrees that its adoption of the Terms become effective as of February 3, 2003, as specified in paragraph 2, above. ARC notes, however, its disagreement with several of the assertions contained in paragraphs 2-8 above, and reserves all rights to seek appropriate legal, regulatory and/or equitable relief should Verizon act in a manner that conflicts or is inconsistent with the Terms and/or applicable laws, rules and regulations.

A.R.C. NETWORKS, INC. D/B/A INFOHIGHWAY

(SIGNATURE)

(PRINT NAME)

c: R. Ragsdale – Verizon